IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

CRP.No. 340 of 2007()

CMA.52/2004 of ADDL. DISTRICT COURT, PATHANAMTHITTA AGAINST THE ORDERS IN I.A.3425/03 AND I.A.3426/05 IN OS.353/1994 of MUNSIFF COURT, ADOOR
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REVN. PETITIONER: APPELLANT

SURENDRAN, S/O. PARAMU,
MANIYATHU KUZHIYIL VEEDU, THAUVAYOOR SOUTH MURI,
KADAMPANADU VILLAGE.

BY ADV. SRI.JACOB P.ALEX

RESPONDENTS:
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1. B.B.PANDARATHIL,
THAMARASSERY MADOM, ERATHU KULANGARA MURI,
KALAYAPURAM VILLAGE, KOTTARAKKARA TALUK.

2. B.B.RAMESH KUMAR, S/O. B.B.PANDARATHIL,
THAMARASSERY MADOM, ERATHU KULANGARA MURI,
KALAYAPURAM VILLAGE, KOTTARAKKARA TALUK.

3. B.SATHEESH KUMAR, S/O. B.B.PANDARATHIL,
THAMARASSERY MADOM, ERATHU KULANGARA MURI,
KALAYAPURAM VILLAGE, KOTTARAKKARA TALUK.

BY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. No.340 OF 2007

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Dated this the 18th day of July, 2007

O R D E R

This revision petition is preferred against the judgment of the Addl.District Court, Pathanamthitta in C.M.A.No.52 of 2004. The revision petitioner moved I.A.No.3425 of 2003 and I.A.No.3426 of 2003 for setting aside the ex parte decree after condoning the delay. The trial court dismissed the same and it has confirmed in appeal by the appellate court. Now the C.R.P. is against those decisions.

2. I am conscious of the fact that as far as possible the principle of natural justice mandates that opportunity should be given to the party to contest the case on merits. But a definite caution is given by this court in the decision reported in ***Sreedhara Kurup v. Mickel*** (1968 KLT 599) and 1981(1) KLT 1008. It was held therein that it is largely a matter of wise discretion to be exercised by the Court bearing in mind the wholesome principle that the right of a party to be heard should be negatived only if there is gross negligence or gross carelessness and that if some steps have been taken and application for restoration has been made with some

diligence and some evidence adduced making out a sufficient cause for absence, restoration should be ordered, minor misconduct or laches being corrected by the common curative of costs.

3. With this principle, let me analyse the case before me. At the outset, I may like to point out that the revision petitioner has not even chosen to state the date of ex parte order passed against him and he has not given the number of days of delay that has to be condoned. That itself shows his promptness in carrying on proceeding of the case. A perusal of the order of the learned District Judge would show that the case was disposed of in the year 2000 and there were various litigations and the revision petitioner was always in one court or the other. The reasons to condone the delay are also vague. The suit was disposed of in the year 2000 but he speaks about the reasons for condonation of delay in 2002, etc.. The Apex Court has held that there must be some explanation for condoning the delay, though day-today delay is not properly explained. Here, absolutely there is no mention about the days of delay and much less any proper explanation for that.

Therefore there is absolutely no reason to condone the delay, much

less any reason to set aside the ex parte decree. C.R.P. lacks merit and the same is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-